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**SENATE BILL**

**No. 1342**

**Introduced by Senator Burton**

(Principal coauthor: Assembly Members Baugh and  
Villaraigosa)

**(Coauthors: Senators Alarcon, Alpert, Figueroa, Johnson,  
Lewis, McPherson, Murray, Perata, Polanco, Solis, Speier,  
and Vasconcellos)**

(Coauthors: Assembly Members Ackerman, Alquist, Bock,  
Campbell, Cardenas, Cardoza, Cox, Dutra, Keeley, Knox,  
Kuehl, Leach, Longville, Mazzoni, Migden, and  
Washington)

January 10, 2000

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An act to add Section 1405 to, and to add and repeal Section  
1417 of, the Penal Code, relating to forensic testing.



## LEGISLATIVE COUNSEL'S DIGEST

SB 1342, as amended, Burton. Forensic testing: post conviction.

Existing law authorizes the defendant in a criminal case to file a motion for a new trial upon specified grounds including, but not limited to, the discovery of new evidence that is material to the defendant, and which could not, with reasonable diligence, have been discovered and produced at the trial.

This bill would grant to a defendant who was convicted of a felony and currently serving a term of imprisonment, the right to make a written motion under specified conditions for the performance of forensic DNA testing. The bill would require that the motion include an explanation of why the applicant's identity was or should have been a significant issue in the case, how the requested DNA testing would raise a reasonable probability that the verdict or sentence would have been more favorable if the DNA testing had been available at the trial resulting in the judgment of conviction, and a reasonable attempt to identify the evidence to be tested and the type of DNA testing sought. The motion would also have to include the results of any previous DNA tests and the court would be required to order the party in possession of those results to provide access to the reports, data and notes prepared in connection with the DNA tests to all parties. The bill would also provide that the cost of DNA testing ordered under this act would be borne by either the state or by the applicant if, in the interests of justice the applicant is not indigent and possesses the ability to pay.

The bill would also require, except as otherwise specified, the appropriate governmental entity to preserve any biological material secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with that case. *These provisions would remain in effect until January 1, 2003.* By increasing the duties of local officials this bill would impose a state-mandated local program.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated~~



~~by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that the Legislature finds there is no mandate contained in the bill that will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to these constitutional and statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1405 is added to the Penal Code,  
2 to read:

3 1405. (a) A person who was convicted of a felony and  
4 is currently serving a term of imprisonment may make  
5 a written motion before the trial court that entered the  
6 judgment of conviction in his or her case, for performance  
7 of forensic deoxyribonucleic acid (DNA) testing.

8 (1) The motion shall be verified by the convicted  
9 person under penalty of perjury and shall do all of the  
10 following:

11 (A) Explain why the identity of the perpetrator was,  
12 or should have been, a significant issue in the case.

13 (B) Explain in light of all the evidence, how the  
14 requested DNA testing would raise a reasonable  
15 probability that the convicted person's verdict or  
16 sentence would be more favorable if the results of DNA  
17 testing had been available at the time of conviction.

18 (C) Make every reasonable attempt to identify both  
19 the evidence that should be tested and the specific type  
20 of DNA testing sought.

21 (2) Notice of the motion shall be served on the  
22 Attorney General, the district attorney in the county of  
23 conviction, and, if known, the governmental agency or  
24 laboratory holding the evidence sought to be tested.  
25 Responses, if any, shall be filed within 60 days of the date  
26 on which the Attorney General and the district attorney  
27 are served with the motion, unless a continuance is  
28 granted.

1 (3) If any DNA or other biological evidence testing  
2 was conducted previously by either the prosecution or  
3 defense, the results of that testing shall be revealed in the  
4 motion for testing, if known. If evidence was subjected to  
5 DNA or other forensic testing previously by either the  
6 prosecution or defense, the court shall order the  
7 prosecution or defense to provide all parties and the court  
8 with access to the laboratory reports, underlying data,  
9 and laboratory notes prepared in connection with the  
10 DNA testing.

11 (b) The court, in its discretion, may order a hearing on  
12 the motion. The motion shall be heard by the judge who  
13 conducted the trial unless the presiding judge determines  
14 that judge is unavailable. Upon request of either party,  
15 the court may order, in the interest of justice, that the  
16 convicted person be present at the hearing of the motion.

17 (c) The court shall appoint counsel for the convicted  
18 person who brings a motion under this section if that  
19 person is indigent.

20 (d) The court shall grant the motion for DNA testing  
21 if it determines all of the following have been established:

22 (1) The evidence to be tested is available and in a  
23 condition that would permit the DNA testing that is  
24 requested in the motion.

25 (2) The evidence to be tested has been subject to a  
26 chain of custody sufficient to establish it has not been  
27 substituted, tampered with, replaced or altered in any  
28 material aspect.

29 (3) The identity of the perpetrator of the crime was,  
30 or should have been, a significant issue in the case.

31 (4) The convicted person has made a prima facie  
32 showing that the evidence sought to be tested is material  
33 to the issue of the convicted person's identity as the  
34 perpetrator of, or accomplice to, the crime, special  
35 circumstance, or enhancement allegation that resulted in  
36 the conviction or sentence.

37 (5) The requested DNA testing results would raise a  
38 reasonable probability that, in light of all the evidence,  
39 the convicted person's verdict or sentence would have  
40 been more favorable if the results of DNA testing had

1 been available at the time of conviction. The court in its  
2 discretion may consider any evidence whether or not it  
3 was introduced at trial.

4 (6) The evidence sought to be tested meets either of  
5 the following conditions:

6 (A) It was not tested previously.

7 (B) It was tested previously, but the requested DNA  
8 test would provide results that are reasonably more  
9 discriminating and probative of the identity of the  
10 perpetrator or accomplice or have a reasonable  
11 probability of contradicting prior test results.

12 (7) The testing requested employs a method generally  
13 accepted within the relevant scientific community.

14 (8) The motion is not made solely for the purpose of  
15 delay.

16 (e) If the court grants the motion for DNA testing, the  
17 court order shall identify the specific evidence to be  
18 tested and the DNA technology to be used. The testing  
19 shall be conducted by a laboratory mutually agreed upon  
20 by the district attorney in a noncapital case, or the  
21 Attorney General in a capital case, and the person filing  
22 the motion. If the parties cannot agree, the court's order  
23 shall designate the laboratory to conduct the testing and  
24 shall consider designating a laboratory accredited by the  
25 American Society of Crime Laboratory Directors  
26 Laboratory Accreditation Board (ASCLD/LAB).

27 (f) The result of any testing ordered under this section  
28 shall be fully disclosed to the person filing the motion, the  
29 district attorney, and the Attorney General. If requested  
30 by any party, the court shall order production of the  
31 underlying laboratory data and notes.

32 (g) (1) The cost of DNA testing ordered under this  
33 section shall be borne by the state or the applicant, as the  
34 court may order in the interests of justice, if it is shown  
35 that the applicant is not indigent and possesses the ability  
36 to pay. However, the cost of any additional testing to be  
37 conducted by the district attorney or Attorney General  
38 shall not be borne by the convicted person.

39 (2) In order to pay the state's share of any testing costs,  
40 the laboratory designated in subdivision (e) shall present

1 its bill for services to the superior court for approval and  
2 payment. It is the intent of the Legislature to appropriate  
3 funds for this purpose in the 2000–01 Budget Act.

4 (h) An order granting or denying a motion for DNA  
5 testing under this section shall not be appealable, and  
6 shall be subject to review only through petition for writ  
7 of mandate or prohibition filed by the person seeking  
8 DNA testing, the district attorney, or the Attorney  
9 General. Any such petition shall be filed within 20 days  
10 after the court's order granting or denying the motion for  
11 DNA testing. In a noncapital case, the petition for writ of  
12 mandate or prohibition shall be filed in the court of  
13 Appeals. In a capital case, the petition shall be filed in the  
14 California Supreme Court. The court of Appeals or  
15 California Supreme Court shall expedite its review of a  
16 petition for writ of mandate or prohibition filed under  
17 this subdivision.

18 (i) DNA testing ordered by the court pursuant to this  
19 section shall be done as soon as practicable. However, if  
20 the court finds that a miscarriage of justice will otherwise  
21 occur and that it is necessary in the interests of justice to  
22 give priority to the DNA testing, a DNA laboratory shall  
23 be required to give priority to the DNA testing ordered  
24 pursuant to this section over the laboratory's other  
25 pending casework.

26 (j) DNA profile information from biological samples  
27 taken from a convicted person pursuant to a motion for  
28 postconviction DNA testing is exempt from any law  
29 requiring disclosure of information to the public.

30 (k) The provisions of this section are severable. If any  
31 provision of this section or its application is held invalid,  
32 that invalidity shall not affect other provisions or  
33 applications that can be given effect without the invalid  
34 provision or application.

35 SEC. 2. Section 1417.9 is added to the Penal Code, to  
36 read:

37 1417.9. (a) Notwithstanding any other provision of  
38 law and subject to subdivision (b), the appropriate  
39 governmental entity shall retain any biological material  
40 secured in connection with a criminal case for the period

1 of time that any person remains incarcerated in  
2 connection with that case. The governmental entity shall  
3 have the discretion to determine how the evidence is  
4 retained pursuant to this section, provided that the  
5 evidence is retained in a condition suitable for DNA  
6 testing.

7 (b) A governmental entity may dispose of biological  
8 material before the expiration of the period of time  
9 described in subdivision (a) if all of the conditions set  
10 forth below are met:

11 (1) The governmental entity notifies all of the  
12 following persons of the provisions of this section and of  
13 the intention of the governmental entity to dispose of the  
14 material: any person, who as a result of a felony conviction  
15 in the case is currently serving a term of imprisonment  
16 and who remains incarcerated in connection with the  
17 case, any counsel of record, the public defender in the  
18 county of conviction, the district attorney in the county  
19 of conviction, and the Attorney General.

20 (2) The notifying entity does not receive, within 90  
21 days of sending the notification, any of the following:

22 (A) A motion filed pursuant to Section 1405, however,  
23 upon filing of that application, the governmental entity  
24 shall retain the material only until the time that the  
25 court's denial of the motion is final.

26 (B) A request under penalty of perjury that the  
27 material not be destroyed or disposed of because the  
28 declarant will file within 180 days a motion for DNA  
29 testing pursuant to Section 1405 that is followed within  
30 180 days by a motion for DNA testing pursuant to Section  
31 1405, unless a request for an extension is requested by the  
32 convicted person and agreed to by the governmental  
33 entity in possession of the evidence.

34 (C) A declaration of innocence under penalty of  
35 perjury that has been filed with the court within 180 days  
36 of the judgment of conviction or July 1, 2001, whichever  
37 is later. However, the court shall permit the destruction  
38 of the evidence upon a showing that the declaration is  
39 false or there is no issue of identity that would be affected  
40 by additional testing. The convicted person may be

1 cross-examined on the declaration at any hearing  
2 conducted under this section or on an application by or  
3 on behalf of the convicted person filed pursuant to  
4 Section 1405.

5 (3) No other provision of law requires that biological  
6 evidence be preserved or retained.

7 (c) This section shall remain in effect only until  
8 January 1, 2003, and on that date is repealed unless a later  
9 enacted statute that is enacted before January 1, 2003,  
10 deletes or extends that date.

11 ~~SEC. 3. Pursuant to Section 17579 of the Government~~  
12 ~~Code, the Legislature finds that, because activities~~  
13 ~~required by the act are part of activities required by~~  
14 ~~existing law, there is no mandate contained in this act that~~  
15 ~~will result in costs incurred by a local agency or school~~  
16 ~~district for a new program or higher level of service which~~  
17 ~~require reimbursement pursuant to Section 6 of Article~~  
18 ~~XIII B of the California Constitution and Part 7~~  
19 ~~(commencing with Section 17500) of Division 4 of Title~~  
20 ~~2 of the Government Code.~~

